

RIGHTS ADVOCACY

Amplifying children justice system



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CHILDREN being in one of the most vulnerable groups of the society, need special care in handling especially in case of delinquency. Although children justice systems exist in countries throughout the world but they usually vary with the degree of harassment associated with the handling of children and the corrective measures adopted thereupon. The level of variation and gravity of harassment necessitated the promulgation of various international instruments which are used as the measuring tools of the children justice system, one of which is the Convention on the Rights of the Child (CRC) 1989, which has a binding effect upon the ratifying member States of the United Nations for adoption. It is the responsibility of every citizen to ensure that children's rights are affirmed and to improve the life of children; and to protect their rights. Therefore, the responsibility implies that state and civil society organisations ensure the full flowering of childhood and protection of children.

Though the international conventions have set certain responsibilities for the ratifying States, there is no formal obligation to implement the provisions of the conventions. It is an accepted principle that international covenants, conventions treaties and other instruments signed by the State parties are not considered to be binding unless they are incorporated into the laws of the land. The general practice of the country is evident that international treaties do not automatically become part of the domestic laws unless and until they are incorporated into the domestic legislation.

The issue of state responsibility is very much important to create a child-friendly justice in the country. In practice, courts in Bangladesh cannot enforce international treaties even if ratified by the State. They must be incorporated in the municipal legislation.

However, the status of treaty under the constitution within the domestic

law still remains unclear in many cases. But where there is a gap in the municipal law in addressing any issue, the courts may take recourse to the international conventions and protocols on that issue for the purpose of formulating directives and guidelines to be followed by all concerned until the national legislation enacts laws in this regard. Thus, any international convention or treaty can be invoked by the court upon its incorporation by the parliament. Although courts cannot enforce treaties or conventions even after they have been ratified, they (courts) can use them for explaining the grounds of the judgments.

The High Court Division issued some landmark judgments which established the fact that no children should be tried by the criminal justice system or by any special tribunal established under any special law. The courts have considered the development of the children laws, international treaties, covenants and conventions in the cases of *State v Md Roushan Mondal* (59 DLR 2007 72) the *State v Metropolitan Police Commissioner, Khulna* (60 DLR 2008 660) etc. and have explained how and why should Bangladesh express its subordination towards the international treaties and conventions. In this regard it was held as follows: "Bangladesh was one of the first signatories to the Convention and is bound to take steps for implementing the provisions thereof. Being a signatory we cannot ignore, rather we should, so far as possible, implement the aims and goals of the UNCRC."

After seven years of the case of *State vs. Md Roushan Mondal* Bangladesh has reflected the CRC in the new Children Act 2013 including juvenile courts and juvenile justice board for child welfare by the Children Act 2013.

The CRC upon its ratification has become binding on Bangladesh. The Convention in Article 4 sets out the general measures of implementation that the States are required to undertake to implement all the rights stated in the CRC, including in the area of

legislative reform. Thus, Article 4 of the Convention provides that "State Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention." State parties to the CRC must have a legal framework that is both effective and compatible with the CRC and that ensures that the rights the Convention vests in children are fully enforceable under the national laws.

To make the CRC effective, it has been a part of the domestic law as well in 2013. From legal point of view, only the CRC amongst the major international instruments, is legally binding, while the other three instruments (Beijing Rules, Riyadh Guidelines and JDL Rules) exist to be the non-binding 'soft laws'. These three non-binding instruments complement and provide guidance for the implementation of the CRC and accordingly referred to as 'United Nations standards and norms in juvenile justice'.

The law enforcement mechanism is very weak in developing countries like Bangladesh. It is needed to develop accountability to all levels and to build up international network for the promotion of responsibility towards fair children justice. At the same time, it is needed to make dramatic progress on internalisation of law with a special focus on responsibility in order to take effective binding measures.

It is also important to train up the persons concerned in the children justice system so that proper implementation of the new law can be ensured. Therefore, a holistic approach must be taken by all concerned to ensure that the children of this country achieve fulfillment of their rights. In this context, Bangladesh should develop a mechanism for the implementation of the international standards to achieve justice and dignity for our children.

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Towards being a role model for ensuring right to food

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RIGHT to food though is not an age old notion but now people all over the world including the people of Bangladesh are more or less familiar with this very concept. Though there were some misconceptions mostly because of interpreting it literally, but gradually it is becoming more transparent and practical. With the significant changes to the welfare state concept, now there are some more duties of the state authority other than preservation of law and order, collecting taxes and protecting the citizens from foreign enemies. Rather, it is now a duty of the state to provide the essential security of living peacefully and of course living hunger free in the state. Being the mother of all laws of the country, our Constitution provides various rights for the citizens and imposes obligations upon the state authority in the name of Fundamental Principles of State Policy. State will not feed you but will make you capable to manage your food, ensure your legitimate access to food; the obligation of the state is limited to this extent only.

Bangladesh, has for long been successfully maintaining its people with the advantages of some basic policies and programs targeted towards ensuring the right to food of the people. In the year 1998 the Government of Bangladesh took an exhaustive food security policy for the country which was again revised in the year 2006. In this very policy the three essential features of right to food namely availability, accessibility and utilisation of food are vividly and expressly ensured.

people of Bangladesh is being respected. Bangladesh has enacted and implemented various laws like Consumer Rights Protection Act, 2009; Safe Food Act, 2013; Formalin Control Act, 2015; Breast Milk Substitutes, Baby Food, Commercially Manufactured Supplementary Baby Food and its Equipment (Regulation of Marketing) Act, 2013 to protect the access to food of the people and protecting their Right to Food thereby. Again Special Powers Act, 1974 also protects Right to Food of the people by way of controlling the hoarding, black marketing and adulteration of the food.

Now it is time to ensure the other two Obligations for which the Constitution must be interpreted in a liberal manner so that Fundamental Principles of State Policy can be enforced against the government for the interest of the people as people are the sole owners of the state and government is merely their representative, so government is bound to obey the people's will, the Constitution; thus it will be the duty of the government to ensure people's right to food by making them capable of earning their own food.

It is now the high time to make such arrangements so that rent seekers may not be able to take control over the food supply chain. Government must make such arrangement so that farmers, the backbone, the insurer of food supply of the country may survive well; the rent seekers and corporate evil must be eliminated with iron hand. If the farmers live, if there are cultivatable land and supply of agricultural commodities are available, if the farmers get



The term 'Right to Food' though not expressly or directly used in our Constitution as a right, but in Part 2 of the Constitution it has been recognised as a part of the fundamental principles of state policy. Through the provision of Article 11, Constitution guarantees the fundamental human rights and freedoms and respect for the dignity and worth of the human person. Those can only be ensured if right to food can be ensured. Article 15 of the Constitution stipulates the fundamental responsibility of the state to secure its citizens with the provisions of basic necessities of life, including food, clothing, shelter, education and medical care.

Article 14, Article 16, Article 18, Article 20 and Article 25 impose upon the state the responsibility to create such a condition where right to food will be ensured. It will not be too much to say that being a very young country taking birth with the poorest economic condition only 44 years ago Bangladesh has attained more than what could be expected and those are of course better than our neighbouring countries. Following the footmark of other developed countries our country is stepping forward giving this very right a concrete shape. There are three obligations of the state to ensure right to food: these are namely, Obligation to Respect, Obligation to Protect and Obligation to Fulfil. By way of various social safety net programs the right to food of the

just price of their labour, the farmers of Bangladesh will be able to produce enough food to feed us all. Our duties and responsibilities are to protect the framers, protecting from natural as well as corporate calamities and from rent seekers at the top. An umbrella law should be enacted for securing right to food.

We have known that the Law Commission is working on preparing a right to food law for Bangladesh. We will expect that this law will be a model law on right to food and Bangladesh will be a role model for the world on ensuring right to food for its people. It is not possible for a country to ensure full food security for its people. Again, we cannot expect to live better keeping our neighbours hungry, so a regional food safety net must be created. SAARC Food Bank needs to be made a reality as soon as possible. Recently in a Regional Conference titled, 'South Asian Right to Food Conference, 2015' our Finance Minister and government high officials of other SAARC countries have ensured that they are working on it with their utmost effort. Let us wait for the sunrise. Let the world shine by the lights of Bangladesh's success on ensuring right to food.

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LAW THROUGH THE LENS



Photo shot below Science Lab foot over bridge

YES you got it right, the man on the right is taking a piss; slow and relaxed as if there is no tomorrow. Why is the person on the left running? Probably running away from the awful stench? Recently in India, as part of Prime Minister Narendra Modi's initiative of 'Swachh Bharat' campaign, India's Government Railway Police (GRP) of Agra sentenced nearly 109 people for 24 hours of urinating in public. Urinating in public is an offence of nuisance under section 34 of the Police Act, 1861. While the law has certainly been there in the books all along, the important question is who will enforce it? Should the citizens themselves be more vigilant and stop it when they observe people urinating in public? Interestingly as part of a psychological campaign, the City Corporation painted some walls near mosques in Arabic Text (the text urging people not to urinate in front of the mosque wall), and apparently its working. People just don't want to urinate on the sacred Arabic text. Whatever works! An all-round concerted effort by law enforcing agency as well as public is necessary to stop this nuisance. Its high time we take some kind of initiative!

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Legal protection of the accused

Audi Alteram Partem (No man shall be condemned unheard) is a basic principle of natural justice that means no one is to be condemned, punished, or deprived of his/her life or property in any judicial proceeding, unless he/she has had an opportunity of being heard. The principles of natural justice have been violated repeatedly by law-enforcement agencies of Bangladesh through so-called 'cross-fires'/ gunfight. The Universal Declaration of Human Rights guarantees the human rights under, especially Article 3; everyone has the right to life, liberty and security of person, Article 5; No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, Article 9; No one shall be subjected to arbitrary arrest, detention or exile.

The Constitution of Peoples' Republic of Bangladesh provides the fundamental rights of the citizens in the third chapter (Article 26 to 47A). It rejects any kind of discrimination in terms of religion, race, caste, sex or place of birth. Articles: 31, 32 and 33 describe that citizens are entitled to enjoy the safeguards as to arrest and detention, protection of the law and treated in accordance with law and not deprived of life or personal liberty except in accordance with law, Article 35 ensures fair trial in criminal prosecution (A man should not be punished prior to conviction).

However, some restrictions may be imposed in conferring the rights. Above all the fundamental rights described in Bangladesh Constitution resemble very effectively the principles inscribed in the UN Universal Declaration of Human Rights and provide a legal basis for citizens for a free and fair environment in the national polity.

The Chief Justice MC Lachin, Supreme Court of Canada in *Charkowi v Canada*, 2007 SCC 9, (2007) ISCR 350 Para 64. The Court held that, "How can one meet a case one doesn't know?" In *Dr. Bently Case*, his Lordship, Justice Fortescue held that, Even God gives chance to Adam for fair opportunity to answer. "Have you eaten from the tree which I forbade you?" -God inquired. *R. v University of Cambridge* (1723), 1 Str 557 at P 567: 93 ER 698. Article 14.2 of International Covenant on Civil and Political Rights, 1966, which Bangladesh acceded to in 2000, states that everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. Presumption of innocence is the vital right of the accused because he possesses some sort of dignity and honour as a human being and never ever he wants to lose it.

A person may be guilty in the eye of law but he cannot be punished without due process of law. We cannot accept the ancient rule that is "Blood for Blood." We are directly and unquestionably against the crime but as humankind a criminal has right to take protection before the law and the law will be decided whether he is guilty or not. If he is guilty he will be punished in accordance with law but not before trial.

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